

CHAPTER 55-10

PRESERVATION OF HISTORIC SITES AND ANTIQUITIES

55-10-01. Policy. It is hereby declared to be in the public interest to provide for the preservation of historic sites, buildings, structures, and antiquities of state and national significance for the inspiration, use, and benefit of the people of the state of North Dakota.

55-10-02. Definitions.

1. Land or water areas containing historical or archaeological value for the purpose of this chapter are designated as "state historic sites". A state historic site is also an area designated by the state historical society as a site possessing historical value of state or national significance. The term state historic site includes the items defined in this section.
2. A "state historical marker" is a plaque, sign, or marker authorized by the state historical society and includes markers maintained by the department of transportation, the state parks and recreation department, or other departments or agencies of the state and its governmental subdivisions.
3. A "state archaeological site" is an area that primarily relates to prehistoric man, designated by the state historical society as possessing state or national significance.
4. The "state historic sites registry" is a listing of sites designated by the state historical board as state historic sites according to written criteria established by the board. Sites that have lost characteristics for which they were determined to meet the criteria may be removed from the registry by the state historical board. This registry, and any subsequent annual updates, must be published and distributed.

55-10-03. State historic sites - Registry. Repealed by S.L. 2001, ch. 503, § 57.

55-10-04. State historic sites - Registry - State-owned lands administered by the parks and recreation department or state historical society. Repealed by S.L. 2001, ch. 503, § 57.

55-10-05. State historic sites - Registry - Federally owned lands. Repealed by S.L. 2001, ch. 503, § 57.

55-10-06. State historic sites - Registry - Privately owned lands. Repealed by S.L. 2001, ch. 503, § 57.

55-10-07. Notice to state historical society of land acquisition. Whenever the state or any governmental subdivision acquires any of the property listed in the state historic sites registry as a state historic site, the officer in charge of the acquisition shall notify in writing, as promptly as may be expedient, the director of the state historical society of the acquisition.

55-10-08. Duties of the state and political subdivisions in regard to state historic sites - Historic easements - Prohibitions.

1. The state, its departments and agencies, and each political subdivision are by this chapter notified of the existence of state historic sites on land and water areas in North Dakota listed in the state historic sites registry.
2. The state or a political subdivision may not demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry as a state historic site without first obtaining the prior approval from the director of the state historical society upon authorization of the state historical board, unless section

55-02-07.2 applies to the site. The state and political subdivisions shall cooperate with the director of the state historical society in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves the demolition or alteration.

3. The state or a political subdivision may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the director of the state historical society. A historic easement is:
 - a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic aspects of the property as so restored, reconstructed, or improved;
 - b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided, that no right or duty in favor of or against a holder or another party having a right of enforcement arises under a historic easement before it is accepted by the holder and the acceptance is recorded;
 - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
 - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or a political subdivision;
 - e. Binding upon the holder of the servient tenement and that person's successors and assigns;
 - f. Limited to a term of years provided in the grant and approved by the director of the state historical society, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
 - g. Subject to no other legal limitation upon the duration of estates or of restraint on the alienation thereof, except the limitation contained in section 47-05-02.1; and
 - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.
4. A historic easement is valid even though:
 - a. It is not appurtenant to an interest in real property;
 - b. It can be or has been assigned to another holder;
 - c. It is not of a character that has been recognized traditionally at common law;
 - d. It imposes a negative burden;
 - e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
 - f. The benefit does not touch or concern real property; or

- g. There is no privity of estate or of contract.
5. A project comprising the acquisition of a state historic site or of a historic easement with reference thereto, and the restoration, reconstruction, and improvement of the site and buildings and structures thereon to preserve physical characteristics of historic importance, is declared to be a proper and necessary purpose for the expenditure of public funds. The proceeds of tax increments or bonds or both may be expended by a city for such a project within an urban renewal area when determined by the governing body to be desirable for the redevelopment, rehabilitation, and conservation of the area in accordance with chapter 40-58.
6. If any state agency or department or a political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historic sites registry, the objecting party may submit the objection to arbitration. Arbitration may also be demanded by either the board or the objecting party if the board or the objecting party determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in the demand shall name three arbitrators. The demand must also set forth the objections that the party desires to submit to arbitration, with reference to the particular state historic site. The demand must be made within ninety days of a decision by the board. The demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and set forth in writing its response to the objections set forth in the demand served upon it and any additional objections that it desires to submit to arbitration on its part. The six arbitrators selected shall name a seventh arbitrator. If the party proceeded against fails or refuses to name three arbitrators, the moving party may apply ex parte to the judge of the district court of the county in which the state historical site in question, or any part thereof, is located, for the appointment of the unnamed arbitrators. If upon the appointment of three arbitrators by each of the parties, the six have been unable to agree upon a seventh arbitrator within five days, either party, upon five days' notice may apply to the district court for the appointment of the seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. A state agency may select its arbitrators from its officers or employees. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be acknowledged by the parties in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however, the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, must be given in writing to the parties concerned and is binding upon both parties. Thereafter, the arbitration must proceed in accordance with chapter 32-29.2.

55-10-09. Cooperation. The state and its political subdivisions shall cooperate with the director of the state historical society in safeguarding state historic sites and in the preservation of historic and archaeological sites.

55-10-10. North Dakota historic sites - Changes. Sites designated as state historic sites may be changed from time to time. The director of the state historical society shall notify the legislative assembly of each change.

55-10-11. Recognition of federal historical preservation law. The state of North Dakota hereby recognizes the provisions of Public Law 89-665, [16 U.S.C. 470 et seq.] approved October 15, 1966, an Act to establish a program for the preservation of additional historic properties throughout the nation, and all acts amendatory and supplementary thereto. The state historical society of North Dakota is hereby authorized and empowered to conduct, coordinate, and carry out the purposes and objectives of this Act of Congress to the extent to which this Act is determined by the state historical board to be beneficial to the state of North Dakota. The state historical society may carry out a comprehensive statewide historic survey in accordance with criteria established by the secretary of the interior for the preservation, acquisition, and development of such property as provided in the Act of Congress. The society may transfer funds made available to the state to other state agencies, local governments, and to other public bodies, private organizations, and individuals for the acquisition of title or interests in, and for the development of, any district, site, building, structure, or object significant in American history, architecture, archaeology, and culture, or property used in that connection, and for its development to assure the preservation for public benefit of any historic properties, in compliance with this Act of Congress and with rules and regulations promulgated by the secretary of the interior for its administration. For these purposes, the state historical society may inspect the projects and examine the records of those projects eligible for grants and may establish necessary rules and regulations for the projects.

55-10-12. State historical marker program. The state historical society may develop and administer a historical marker program for the purpose of identifying local, state, and national points of interest in this state. The society shall authorize official markers to mark recognized sites and shall maintain an official historical markers' sites listing. All costs, including production, installation, and maintenance of a historical marker, are the responsibility of the applicant or sponsor of the marker.

55-10-13. Defacing historical marker - Penalty. A person is guilty of an infraction if the person destroys, removes, alters, defaces, or damages any state historical marker.